



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210928-0199]

RTID 0648-XT041

Atlantic Highly Migratory Species; Adjustments to 2021 Northern Albacore Tuna, North and South Atlantic Swordfish, and Atlantic Bluefin Tuna Reserve Category Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule.

SUMMARY: NMFS adjusts the 2021 baseline quotas for U.S. North Atlantic albacore tuna (northern albacore), North and South Atlantic swordfish, and the Atlantic bluefin Reserve category based on available underharvest of the 2020 adjusted U.S. quotas. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action to adjust the quotas is only temporary and will be effective through December 31, 2021. On January 1, 2022, full annual baseline allocations of northern albacore, North and South Atlantic swordfish, and the Atlantic bluefin tuna will renew and be available to U.S. harvest.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], through December 31, 2021.

ADDRESSES: Supporting documents, including environmental assessments and environmental impact statements, as well as the Fishery Management Plans and their amendments that are described below, may be downloaded from the Highly Migratory Species (HMS) website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>. These documents also are available upon request from Steve Durkee or Karyl Brewster-Geisz at the email addresses and telephone numbers below.

FOR FURTHER INFORMATION CONTACT: Steve Durkee (202-670-6637, steve.durkee@noaa.gov) or Karyl Brewster-Geisz (301-427-8503, karyl.brewster-geisz@noaa.gov).

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including northern albacore, swordfish, and bluefin tuna fisheries, are managed under the authority of the ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27(e) implements the northern albacore annual quota recommended by ICCAT and describes the annual northern albacore quota adjustment process. Section 635.27(c) implements the ICCAT-recommended quotas and describes the quota adjustment process for both North and South Atlantic swordfish. Section 635.27(a) implements the ICCAT-recommended quota and describes the annual quota adjustment process for bluefin tuna. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Note that weight information for northern albacore and bluefin tuna below is shown in metric tons (mt) whole weight (ww), and both dressed weight (dw) and ww are shown for swordfish.

Northern Albacore Annual Quota and Adjustment Process

Since 1998, ICCAT has adopted recommendations regarding the northern albacore fishery. ICCAT Recommendation 17-04 on northern albacore (which supplemented Recommendation 16-06) includes a total allowable catch (TAC) of 33,600 mt for 2018 through 2020 and specific provisions regarding northern albacore conservation and management. The U.S. share of that TAC was a quota of 632.4 mt annually for 2019 and 2020, which is codified at § 635.27(e) and will remain in effect until changed.

At the 2020 Annual ICCAT meeting, the U.S. northern albacore quota was increased from 632.4 mt to 711.5 mt for 2021 (Recommendation 20-04). Given provisions in Recommendation 20-04, it is possible the U.S. northern albacore quota might change at the ICCAT annual meeting this November. In anticipation of such change and to decrease administrative burden, NMFS does not plan to alter the 50 CFR part 635 regulations to incorporate the 2021 quota increase at this time. Since domestic landings are typically less than 50 percent of the baseline, changing the regulations is unlikely to result in increased fishing opportunities or harvest since the domestic fishery is limited by other management measures other than the quota. The full 711.5 mt remains available, however, and NMFS will monitor landings and initiate rulemaking to update the baseline quota if landings reach 75 percent of the adjusted quota. Northern albacore landings for January through June 2021 were 119.6 mt (15 percent of the quota as adjusted under this action). After ICCAT reconvenes in 2021, NMFS would initiate appropriate rulemaking to address any changes made to the domestic quota.

Relevant to the northern albacore quota adjustment in this action, and as codified at § 635.27(e)(2), the maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which would be 158.1 mt for the United States.

Adjustment of the 2021 Northern Albacore Quota

Consistent with regulations at § 635.27(e), NMFS adjusts the U.S. annual northern albacore quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT carryover limits when complete catch information for the prior year is available and finalized. Under ICCAT Recommendation 17-04, the maximum underharvest that a Contracting Party may carry forward from one year to the next is 25 percent of its initial catch quota, which, relevant to 2021, would be 158.1 mt for the United States (25 percent of 632.4 mt).

For 2020, the adjusted quota was 790.5 mt (632.4 mt plus 158.1 mt of 2019 underharvest carried forward to 2020, based on 25 percent of the 632.4-mt quota in place for 2019) (83 FR 51391, October 11, 2018). The total 2020 northern albacore catch, which includes landings and dead discards, was 332.49 mt, which is an underharvest of 458.01 mt of the 2020 adjusted quota. Of this underharvest, 158.1 mt may be carried forward to the 2021 fishing year. Thus, the adjusted 2021 northern albacore quota is 632.4 mt plus 158.1 mt, totaling 790.5 mt.

North and South Atlantic Swordfish Annual Quota and Adjustment Process

North Atlantic Swordfish

Consistent with the North Atlantic swordfish quota regulations at § 635.27(c), NMFS adjusts the U.S. annual North Atlantic swordfish quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits and when complete catch information for the prior year is available and finalized. Under ICCAT Recommendation 17-02, the U.S. North Atlantic swordfish baseline annual quota for 2018 through 2021 is 2,937.6 mt dw (3,907 mt ww). The maximum underharvest that the United States may carry forward from one year to the next is 15 percent of the baseline quota, which equals 440.6 mt dw (586 mt ww) for the

United States. In 2020, the adjusted North Atlantic swordfish quota was 3,378.2 mt dw (2,937.6 mt dw baseline quota + 440.6 mt dw carried over from 2019).

The total 2020 U.S. North Atlantic swordfish catch, which includes landings and dead discards, was 1,100.08 mt dw, which is an underharvest of 2,278.12 mt dw of the 2020 adjusted quota. This underharvest exceeds the 440.6-mt dw underharvest carryover limit allowed under Recommendation 17-02. Thus, NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed. The 2,937.6-mt dw baseline quota is increased by the underharvest carryover of 440.6 mt dw, resulting in a final adjusted North Atlantic swordfish quota for the 2021 fishing year of 3,378.2 mt dw ($2,937.6 + 440.6 = 3,378.2$ mt dw). From that adjusted quota, 50 mt dw will be allocated to the reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the incidental category, which covers recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at § 635.27(c)(1)(i). This results in an allocation of 3,028.2 mt dw ($3,378.2 - 50 - 300 = 3,028.2$ mt dw) for the directed category, split equally between two seasons in 2021 (January through June, and July through December) (Table 1).

South Atlantic Swordfish

Consistent with the South Atlantic swordfish quota regulations at § 635.27(c), NMFS adjusts the U.S. annual South Atlantic swordfish quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits when complete catch information for the prior year is available and finalized. Under ICCAT Recommendation 17-03, the U.S. South Atlantic swordfish baseline annual quota for 2021 is 75.2 mt dw (100 mt ww) and the amount of underharvest that the United States can carry forward from one year to the next is 100 percent of the baseline quota (75.2 mt dw). Recommendation 17-03 continues to require the United States to transfer a total of 75.2 mt dw (100 mt ww) to other countries. These

transfers are 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

U.S. fishermen landed no South Atlantic swordfish in 2020. The adjusted 2020 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2021. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2021 fishing year (Table 1).

Table 1 -- 2021 North and South Atlantic Swordfish Quotas

North Atlantic Swordfish Quota (mt dw)		2020	2021
Baseline Quota		2,937.6	2,937.6
International Quota Transfer		0	0
Total Underharvest from Previous Year		1,906.25	2,278.12
Underharvest Carryover from Previous Year [†]		(+) 440.6	(+) 440.6
Adjusted Quota		3,378.2	3,378.2
Quota Allocation	Directed Category	3,028.2	3,028.2
	Incidental Category	300	300
	Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw)		2020	2021
Baseline Quota		75.2	75.2
International Quota Transfers*		(-)75.2	(-)75.2
Total Underharvest from Previous Year		75.1	75.1
Underharvest Carryover from Previous Year [†]		75.1	75.1
Adjusted quota		75.1	75.1

[†] Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

* Under ICCAT Recommendation 17-03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Bluefin Tuna Annual Quota and Adjustment Process

Consistent with the regulations regarding annual bluefin tuna quota adjustment at § 635.27(a), NMFS annually announces the addition of available underharvest, if any, to

the bluefin tuna Reserve category once complete catch information is available and finalized.

Due to the unprecedented situation in 2020, ICCAT canceled its annual meeting and conducted discussions via correspondence. Recognizing the significant challenges of complex decision making by correspondence, rollovers of expiring measures was ICCAT's default approach. For western Atlantic bluefin tuna, ICCAT adopted Recommendation 20-06, which rolled over the current TAC for 2020; provided for a 2021 stock assessment that would incorporate the most recent available data, including any new abundance indices; and specified TAC levels for 2022 and 2023 that would address overfishing based on the 2020 stock assessment update and management scenario 3 analyzed therein, unless ICCAT decides otherwise based on new Standing Committee on Research and Statistics (SCRS) advice. The status of the stock after the 2020 stock assessment update remained "no overfishing occurring/rebuilding status unknown." Although the SCRS and ICCAT expressed concerns about the current overall TAC level resulting in overfishing in 2021, the projected change in biomass at this current TAC level is on par with the other management scenarios analyzed. Specifically, the update indicates that the current TAC level results in about a one percent greater decline in biomass for 2021 than a TAC level that has a 50 percent of ending overfishing. Furthermore, in the course of managing U.S. fisheries to achieve, but not exceed, the overall ICCAT-recommended U.S. quota, the United States has underharvested its overall quota over the past several years. Given recent trends, it is highly likely that the 2021 fishery will also underharvest the overall quota. Thus, carrying over the underharvest from 2020 would have neutral ecological impacts on the bluefin tuna stock. Similarly, the ecological impacts on other HMS species (as well as protected species) would be neutral because fishing strategies for target species are likely to remain similar under the same quota allocation methods. A full consideration of impacts of the 2021

bluefin tuna TAC and quota are detailed in the 2021 Annual Atlantic Bluefin Tuna Quota Adjustment Supplemental Environmental Assessment. Copies of the 2021 Supplemental Environmental Assessment can be requested as specified in the **ADDRESSES** section.

NMFS implemented relevant provisions of ICCAT western Atlantic bluefin tuna Recommendation 17-06 in a final rule that published in October 2018 (83 FR 51391, October 11, 2018). That rulemaking implemented the recommended annual U.S. baseline quota of 1,247.86 mt, plus an additional 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), for a total of 1,272.86 mt. The total annual U.S. bluefin tuna quota of 1,272.86 mt is codified at § 635.27(a) and will remain in effect until changed (for instance, if a new ICCAT western Atlantic bluefin tuna TAC recommendation is adopted). The maximum underharvest that a Contracting Party may carry forward from one year to the next is 10 percent of its initial catch quota, which, for the United States, is 127.29 mt for 2021 (10 percent of 1,272.86 mt). The relevant provisions remained the same in the 2020 ICCAT recommendation, Recommendation 20-06.

Adjustment of the 2021 Bluefin Tuna Reserve Category Quota

The United States is carrying forward the full, allowable 127.29 mt for 2021. In 2020, the adjusted bluefin tuna quota was 1,400.15 mt (baseline quota of 1,272.86 mt + 127.29 mt of 2019 underharvest carried over to 2020). The total 2020 bluefin tuna catch, including landings and dead discards, was 1,183.49 mt, which is an underharvest of 216.66 mt from the 2020 adjusted quota and exceeds the allowable carryover of 127.29 mt. When carrying over underharvest from one year to the next, NMFS uses the underharvest to augment the bluefin tuna Reserve category quota. Thus, for 2021, NMFS augments the Reserve category quota with the allowable carryover of 127.29 mt.

The codified Reserve category quota is 29.5 mt. Effective February 8, 2021, NMFS adjusted the Reserve category quota for 2021 to 168 mt by reallocating 164.5 mt

of Purse Seine quota to the Reserve category (based on 2020 catch by Purse Seine category participants) and also transferring 26 mt of Reserve category quota to the General category (86 FR 8717; February 9, 2021). Effective August 4, 2021, NMFS transferred 30 mt from the Reserve category quota to the Harpoon category (86 FR 43420, August 9, 2021), leaving a total of 138 mt in the Reserve category. Effective September 9, 2021, NMFS transferred 113.8 mt from the Reserve category quota to the General category (86 FR 51016, September 14, 2021), leaving a total of 24.2 mt in the Reserve category. Thus, as of the effective date of this action (*[insert date of publication in the FEDERAL REGISTER]*), the adjusted 2021 Reserve category quota is 151.49 mt (24.2 mt + 127.29 mt).

Classification

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Act. NMFS designed the FMP to authorize the agency to take this action pursuant to MSA section 305(d) in a previous action taken pursuant to section 304(c). See 50 CFR 635.27. The NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the 2006 Consolidated Atlantic HMS FMP, Amendment 13 to the 2006 Consolidated Atlantic HMS FMP, ATCA, and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the AA finds that it is unnecessary and would be contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the reasons described below.

The rulemaking processes for Amendment 7 to the 2006 Consolidated HMS FMP in 2015 (79 FR 71509, December 2, 2014) and for the 2016 North and South Atlantic Swordfish Quota Adjustment Rule (81 FR 48719, July 26, 2016) specifically provided prior notice of, and accepted public comment on, the formulaic quota adjustment processes for the northern albacore, Atlantic bluefin tuna, and swordfish fisheries and the

manner in which they occur. These processes have not changed, and the application of these formulas in this action does not have discretionary aspects requiring additional agency consideration. Thus, it is unnecessary to provide an opportunity for public comment on this action. There are no new quotas for 2021, and the quota formulas are the same as in previous years. NMFS therefore is issuing this temporary final rule to adjust the northern albacore, North and South Atlantic swordfish, and western Atlantic bluefin tuna quotas for 2021 without prior notice and an additional opportunity for comment. Similar actions to adjust the quotas based on the previous year's underharvest occur annually and the affected community expects similar adjustments in 2021. This action to adjust the 2021 quotas could not occur earlier in the year because final 2020 landings data were not available until now.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and to make the rule effective upon publication in the **Federal Register**. The fisheries for northern albacore, North and South Atlantic swordfish, and bluefin tuna began on January 1, 2021. NMFS monitors northern albacore, North and South Atlantic swordfish, and bluefin tuna annual catch and measures the annual catch data against the applicable available quotas. Delaying the effective date of these quota adjustments would affect the regulated fisheries' reasonable opportunity to catch the available quotas. Adjusting the North and South Atlantic swordfish quota allows the United States to take advantage of the ICCAT allowance to carry over quota underharvest and to comply with the South Atlantic swordfish recommendation's obligation to transfer quota internationally. Adjusting the bluefin tuna Reserve category without the 30-day delay provides NMFS the flexibility to transfer quota from the Reserve to other fishing categories inseason after considering the regulatory determination criteria, including fishery conditions at the time of the transfer, while potentially avoiding premature fishery closures when quota is available.

This action is exempt from review under Executive Order 12866.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 28, 2021.

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[FR Doc. 2021-21508 Filed: 10/1/2021 8:45 am; Publication Date: 10/4/2021]